82-1022

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ALEXANDER L. STEVAS,
CLERK

No. 82 -

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

ALABAMA FURNITURE CO.,

Petitioner,

v.

C. KENNETH STILL, Trustee, and
ULYSSES RIVERS, JR.,

Respondents.

MOTION FOR ACCELERATED EMERGENCY
CONSIDERATION OF PETITION FOR CERTIORARI
UNDER 28 USC §1254(1)

Petitioner Alabama Furniture Co. respectfully requests that this Court grant immediate consideration of its petition for certiorari, filed herein pursuant to 28 USC §1254(1) and Rule 18 of this Court, and in support hereof states as follows:

1. This petition presents this Court a unique opportunity to promptly settle the question, of immediate and critical importance to millions of Americans, whether all bankruptcy relief will cease and the bankruptcy system stop functioning upon release of the Court's stay of mandate in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., ___ U.S. ____, 102 S.Ct. 2858 (June 28, 1982), a decision which effectively eliminated the jurisdiction of the so-called "bankruptcy courts", created throughout the country by the Bankruptcy Reform Act of 1978 ("the 1978 Act") to be the sole and exclusive means for administering bankruptcies under that Act. Many billions of dollars of lost values for debtors and creditors hang in the balance. Extraordinary delays and confusion in the lower federal and state courts are threatened. Great economic harm,

and social and legal confusion, would follow. The interest of the public, creditors and debtors, requires this Court, if possible within the scope of its settled procedures, to avoid these harms - harms which would flow not from the knowing activities of parties in the marketplace but rather from the tug-of-war among the political interests in Congress in the face of the requirements of the Constitution announced by this Court.

2. In Northern Pipeline, this Court held unconstitutional the exercise by the untenured "bankruptcy courts" of the powers and jurisdiction granted them under the 1978 Act, at least with respect to state-created claims. It also held the grant of jurisdiction to these "bankruptcy courts" to be inseverable under the 1978 Act. Thus, upon release of the stay of mandate, these "bankruptcy courts" will lack all jurisdiction and cease to function.

3. If the "bankruptcy courts" cannot function, no bankruptcies can be administered under the 1978 Act. For reasons discussed in the Petition, the district courts are disabled under that Act from assuming these functions. Without action by Congress, and lacking governing contrary authorization from this Court, no new bankruptcies will be administered and all pending bankruptcy proceedings will halt.

4. Congress has not acted nor does it appear likely to do so. Although the Northern Pipeline mandate was originally stayed until October 4, 1982, it was continued until December 24, 1982 to afford Congress ample further opportunity to redo its 1978 enactment to conform to constitutional requirements. Congress has not taken advantage of this opportunity but instead, to the best of our information, will not produce curative legislation this term or likely in the near future.

5. Neither can this Court indefinitely prolong its stay

of mandate, for to do so permits the continuance of an unconstitutional enactment and diminishes the authority of this Court's sanction both to the other branches and to the public. Thus, absent action on this petition by this Court, the immediate and disastrous consequences to the public, debtors and creditors which were remote possibilities in June will become frightening realities.

6. Petitioner suggests that this chaotic and disastrous outcome can be avoided by this Court and in this case. As set out in the Petition for Certiorari, cessation of the functioning of the "bankruptcy courts", which were created to be the sole and exclusive means for administering the 1978 Act, necessarily renders that Act invalid in its entirety because it cannot be administered. This mandates revival of the prior Bankruptcy Act, which is in fact still in effect for certain pending cases. Since there were few substantive changes in the 1978 Act from the prior Act, and the current referees (judges) were both appointed under and, with revival, will be fully empowered to administer the prior Act, the administration of bankruptcies can continue unabated and without loss and harm to the public. The potential crisis in bankruptcy administration caused by Congress' failure to act can thus be avoided.

Petitioner respectfully suggests this Court grant this

Petition, and set an expedited schedule for the resolution hereof.[1]

Respectfully submitted,

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[1] Pursuant to 28 USC §2403(a), the bankruptcy court below certified to the Attorney General that the constitutionality of an Act of Congress was drawn into question, but the Attorney General declined to intervene. The Attorney General's motion to intervene in the Sixth Circuit Court of Appeals was denied. Service hereof is nonetheless made upon the Solicitor General.